

4. Jurisdiction of this court is proper under 28 U.S.C. §§ 1331, 1332(a), 1338(a), 15 U.S.C. § 1121, and 28 U.S.C. § 1367. The parties are of diverse citizenship, and the amount in controversy exceeds the sum or value \$75,000.00, exclusive of interests and costs.

**FIRST CAUSE OF ACTION**

**(Registered Trademark Counterfeiting)**

5. Costco is the owner of incontestable U.S. Reg. No. 2,373,426 for the trademark KIRKLAND SIGNATURE (Stylized) as applied to, among other things, men's dress shirts.

6. Costco is the owner of incontestable U.S. Reg. No. 2,296,256 for the trademark KIRKLAND SIGNATURE as applied to, among other things, men's dress shirts.

7. Costco has sold men's dress shirts in United States commerce under the trademarks KIRKLAND SIGNATURE (Stylized) and KIRKLAND SIGNATURE continuously since the 1990's.

8. By reason of longstanding, continuous, and substantially exclusive use in United States commerce, the trademarks KIRKLAND SIGNATURE (Stylized) and KIRKLAND SIGNATURE mark have come to symbolize highly valuable goodwill owned by Costco.

9. On information and belief, defendant Phoenix is engaged in the business of importing men's dress shirts and other foreign made goods into the United States.

10. On information and belief, Phoenix is the consignee of the 51,000 men's shirts referred to in Exhibit 5 to the Declaration of Tammi Laush being filed contemporaneously herewith (the "Subject Shirts").

11. On information and belief, the Subject Shirts bear counterfeit replicas of Costco's KIRKLAND SIGNATURE (Stylized) and KIRKLAND SIGNATURE trademarks.

12. On information and belief, the Subject Shirts are being imported by Phoenix with intent to pass them off as genuine KIRKLAND SIGNATURE men's dress shirts, when in truth and in fact, the Subject Shirts are counterfeit and unauthorized by Costco.

13. The Counterfeit Shirts are scheduled to arrive in the United States by ship from China on June 16, 2015, and to be discharged in New York, New York shortly thereafter.

14. Phoenix's use of counterfeit replicas of Costco's KIRKLAND SIGNATURE (Stylized) and KIRKLAND SIGNATURE trademarks is likely to cause confusion, to cause mistake, or to deceive as to the origin, sponsorship, or approval of the Subject Shirts.

15. On information and belief, Phoenix's use of counterfeit replicas of Costco's KIRKLAND SIGNATURE (Stylized) and KIRKLAND SIGNATURE trademarks has been committed willfully and with specific intent to defraud Costco and others into believing that the Subject Shirts are genuine KIRKLAND SIGNATURE men's shirts, including by attempting to sell the Subject Shirts to Costco through an intermediary in April 2015.

16. The conduct of Phoenix threatens Costco with irreparable harm for which it has no adequate remedy at law.

17. Defendant is liable to Costco for registered trademark infringement under 15 U.S.C. § 1114.

### **SECOND CAUSE OF ACTION**

#### **(Violation of 15 U.S.C. § 1125(a))**

18. Paragraphs 1-17, above are realleged and incorporated by reference as if set forth in full.

19. Phoenix is liable to Costco for violation of 15 U.S.C. § 1125(a).

### **THIRD CAUSE OF ACTION**

#### **(Unfair Competition)**

20. Paragraphs 1 - 19, above, are realleged and incorporated by reference as if set forth in full.

21. Phoenix is liable to Costco for unfair competition under New York law.

WHEREFORE, Costco prays that the court:

- (i) Declare, adjudge, and decree that Phoenix is liable to Costco for registered trademark infringement, violation of 15 U.S.C. § 1125(a), and New York common law;
- (ii) Grant preliminary and permanent injunctions directing Phoenix to deliver the Subject Shirts for destruction and to refrain from acts of trademark infringement, violation of 15 U.S.C. § 1125(a), or unfair competition;
- (iii) Award statutory damages as provided by law, including under 15 U.S.C. § 1117(c);
- (iv) Award compensatory damages as provided by law, including under 15 U.S.C. § 1117(a);
- (v) Award punitive damages as provided by New York law;
- (vi) Order Phoenix to disgorge any profits or gains made using counterfeit replicas of Costco-owned trademarks;
- (vii) Declare this case exceptional and award Costco its reasonable attorneys' fees incurred in filing and prosecuting this action for declaratory and injunctive relief; and
- (viii) Award Costco such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
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